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Teresa Ancona

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CONNOLLY BOVE LODGE & HUTZ, LLP

P O BOX 2207

WILMINGTON, DE 19899

EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/518,729
Filing Date: December 20, 2004
Appellant(s): ANCONA ET AL.

Richard M. Beck
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06 July 2009 appealing from the Office action mailed 07 November 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2001/0035645	Carides et al.	11-2001
5566823	Summers	10-1996

5779482	Fukumoto	7-1998
5753350	Bright	5-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1, 3, 5-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carides in view of Fukumoto.

Regarding claim 1, Carides in view of Fukumoto discloses material (Carides label 10) made up of at least a first and a second sheet (Carides base ply 14 and second ply 26, respectively) each having two opposite faces designated as front and back faces, at least one of these faces being intended to bear legible printed information (see Carides paragraph 15, lines 1-3), this material being characterized in that, in addition to the printed information, at least one of said front faces bears legible information which, distinct from the printed information, is made up in the form of reliefs which appear to be superimposed on the legible printed information (see Fukumoto col. 4, lines 3-5) without changing the legibility of the printed information (see Fukumoto col. 5, lines 25-34, providing that transparent three-dimensional ink may be used to form the raised indicia).

Regarding claim 3, Carides in view of Fukumoto discloses material according to claim 1, characterized in that the information in relief is formed by deposit of an element in relief on at least one of said front faces of at least one of said first and second sheets (see Fukumoto col. 5, lines 25-34).

Regarding claim 5, Carides in view of Fukumoto discloses material according to claim 4, characterized in that the material includes a single sheet constituted by one of said first and second sheets (note that label 10 is made up of a base ply 14 and a second ply 26), and the printed information as well as the information in relief are borne by this sheet (note that Fukumoto raised indicia is borne by the Carides label).

Regarding claim 6, Carides in view of Fukumoto discloses material according to claim 4, characterized in that it includes at least two sheets constituted by said first and second sheets (Carides base ply 14 and second ply 26, respectively), of which: i) said first sheet is made up of opaque material (see Carides paragraph 33, lines 9-14 and paragraph 33, lines 1-6) and whose said front face bears the printed information (see Carides paragraph 15, lines 1-4); ii) said second sheet is made up of transparent material (see Carides paragraph 33, lines 14-17), and on the one hand, at least whose said front face bears the information in relief (note that Fukumoto raised indicia is included upon the second sheet), and on the other hand, is superimposed on the front face of the first sheet that bears the printed information (note that the second sheet is made of transparent material and lies directly above the underlying sheet).

Regarding claim 7, Carides in view of Fukumoto discloses material according to claim 4, characterized in that it includes at least two sheets constituted by said first and second sheets (Carides base ply 14 and second ply 26, respectively), of which said second sheet is made up of opaque material (see Carides claim 13) and whose said front face bears the information in relief (note that the Fukumoto raised indicia may be included on any front face material of the label), said first sheet is made up of

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transparent and flexible material (see Carides paragraph 33, lines 14-17) and bears the printed information at least on its front face (see Carides paragraph 15, lines 1-4), and is superimposed on the front face of said second sheet which bears the information in relief (note that the sheets are placed atop one another).

Regarding claim 8, Carides in view of Fukumoto discloses Material according to claim 4, characterized in that it comprises at least two sheets constituted by said first and second sheets (Carides base ply 14 and second ply 26), of which: i) said second sheet is made up of opaque material (see Carides claim 13) and whose said front face bears the information in relief (note that the Fukumoto raised indicia may be placed upon the Carides label faces as desired); and ii) said first sheet is made up of opaque and flexible material (see Carides paragraph 33, lines 9-14 and paragraph 33, lines 1-6), and bears the printed information at least on its front face (see Carides paragraph 15, lines 1-4), and is closely superimposed on the front face of said second sheet which bears the information in relief (see the combination set forth in the rejection of claim 1, above).

Regarding claim 11, Carides in view of Fukumoto discloses an outer wrapping for a receptacle characterized in that this outer wrapping is made up at least in part of a material according to claim 8 (note that when applied to a receptacle, the label functions as an “outer wrapping” of said receptacle).

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carides in view of Fukumoto and further in view of Bright.

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Regarding claim 2, Carides in view of Fukumoto and further in view of Bright discloses material according to claim 1, characterized in that the information in relief is formed by local deformation along the thickness of at least one of the first and second sheets (see Bright col. 2, lines 6-9).

Regarding claim 4, Carides in view of Fukumoto and further in view of Bright discloses material according to claim 1, characterized in that the information in relief is composed by local modification of the state of the surface of at least one of said front faces of at least one of said first and second sheets (see Bright col. 2, lines 6-9).

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carides in view of Fukumoto and further in view of Summers.

Regarding claim 9, Carides in view of Fukumoto and further in view of Summers discloses packaging comprising a receptacle, characterized in that this receptacle is made up at least in part of a material according to claim 8 (note that it would have been obvious to a person of ordinary skill in the art at the time of the invention to attach the braile label of Carides in view of Fukumoto on the Summers toothbrush holder receptacle in order to mark the receptacle such that each user may be assigned a space, as explicitly taught by Summers [see col. 2, lines 43-46]).

Regarding claim 10, Carides in view of Fukumoto and further in view of Summers discloses an inner lining for a receptacle, characterized in that it is made up at least in part of a material according to claim 8 (see the combination set forth in the rejection of claim 9, above).

(10) Response to Argument

Claims 1, 3, 5-8 and 11 Are Patentable Over the Combination of Carides and Fukumoto

Appellants argue that the Carides reference provides no disclosure or suggestion of appellant's (sic) legible information distinct from the printed information and made up in the form of reliefs (see Appeal Brief pg. 6, lines 3-5).

Examiner agrees. It is the Fukumoto reference which teaches the concept of providing legible information distinct from printed information, and made up in the form of reliefs (see Office Action pg. 3, line 17- pg. 4, line 2)

Appellants argue that there is no suggestion for adding anything to the outside or elsewhere on the label structure of Carides (see Appeal Brief pg. 6, lines 7-8).

Examiner respectfully disagrees. Carides discloses a multi-layered label. Fukumoto teaches the concept of providing its reliefs upon a label (see abstract). Accordingly, it is per se obvious to apply the Fukumoto "label relief" teachings to the Carides label.

Appellants argue that Examiner has resorted to prohibited hindsight while improperly utilizing the present disclosure as the blueprint (see Appeal Brief pg. 6, lines 17-18).

Examiner respectfully disagrees. As set forth in the immediately preceding response, Carides discloses a multi-layered label, and Fukumoto teaches the concept of providing its reliefs upon a label. Accordingly, it is unlikely that a person of ordinary

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skill in the art at the time of the invention would have needed to use Appellants' disclosure as a "blueprint" to make the connection between the two references.

Claims 2 and 4 Are Patentable Over the Combination of Carides, Fukumoto and Bright

Appellants argue that their invention is patentable because: i) Bright fails to disclose printed information and ridges cooperating with one another; and ii) the ridges do not appear to be superimposed on the printed material (see Appeal Brief pg. 7, lines 9-10).

Examiner respectfully disagrees. The combination of Carides, Fukumoto and Bright discloses: i) printed information and ridges cooperating with one another (see the combination set forth in the rejection of claim 1 within the Office Action); and ii) ridges being superimposed on the printed material (see the combination set forth in the rejection of claims 2 and 4 within the Office Action).

Claims 9 and 10 Are Patentable Over the Combination of Carides, Fukumoto and Summers

Appellants argue that there is no teaching or suggestion of appellant's (sic) printed information and further information in the form of reliefs both of which cooperate with one another so that the reliefs appear to be superimposed on the printed information without changing the printed information (see Appeal Brief pg. 7, lines 18-21).

Examiner respectfully disagrees. The combination of Carides and Fukumoto discloses printed information and further information in the form of reliefs, both of which cooperating with one another, so that the reliefs appear to be superimposed on the printed information without changing the printed information (see the combination set forth in the rejection of claim 1 in the Office Action).

Appellants argue that there is no suggestion or motivation to alter the structure of Summers in the manner stated by the Examiner during the prosecution (see Appeal Brief pg. 7, lines 22-23).

Examiner respectfully disagrees. Summers explicitly provides that “[i]ndicia such as animal figures, numbers, letters (including Braille), or the like may be used to mark the receptacles such that each user can be assigned a receptacle” (see col. 2, lines 43-46). It should be noted that: i) Summers specifically includes a suggestion that Braille characters may be added to the receptacle; and ii) Fukumoto teaches the provision of Braille indicia (see abstract). Accordingly, for a person of ordinary skill in the art and in possession of the references at the time of the invention, the making of such a connection would have been imminent.

Appellants argue that many foreign counterparts of the present application have been granted with claims of similar scope (see Appeal Brief pg. 7, lines 24-25).

Examiner does not doubt the veracity of Appellants’ statement. However, Examiner asserts that the patentability determinations of said foreign counterparts are not binding upon the United States Patent and Trademark Office.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Justin V. Lewis/

Examiner, Art Unit 3725

Conferees:

/Dana Ross/

Supervisory Patent Examiner, Art Unit 3725

/Joseph J. Hail, III/

Supervisory Patent Examiner, Art Unit 3723